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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT: Wyatt

EXAMINER: T. Dixon

SERIAL NO.: 09/544,508

GROUP ART UNIT: 3629

FILING DATE: April 6, 2000

ATTY. DKT. NO.: MCO-P-00-001

INVENTION: "A METHOD AND SYSTEM FOR PROVIDING BED AVAILABILITY
INFORMATION ON A COMPUTER NETWORK"

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

SIR:

Appellant submits herewith Appellant's Reply Brief in response to the Examiner's Answer mailed January 6, 2005.

Appellant submits that no fee is required for submission of this Reply Brief. However, the Commissioner is hereby authorized to charge any fees which may be required, or to credit any overpayment to Deposit Acct. No. 50-0595. A duplicate of this sheet is enclosed for this purpose.

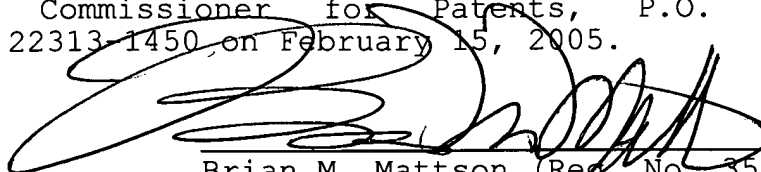
Respectfully submitted,

(Reg. No. 35,018)

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CERTIFICATE OF MAILING

I hereby certify that this **REPLY BRIEF including Exhibit A** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 15, 2005.



Brian M. Mattson (Reg. No. 35,018)

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APPELLANT'S REPLY BRIEF

S I R:

This Reply Brief is submitted in response to the Examiner's Answer mailed January 6, 2005.

In the Examiner's Answer, the Examiner stated that the Appellant's Brief did not include a statement identifying the related appeals and interferences. However, Appellant submitted a statement of related appeals and interferences on page one of Appellant's Appeal Brief. Specifically, Appellant stated, "No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal." See Appellant's Appeal Brief, page 1, lines 20-24, attached as Exhibit A.

In the Examiner's Answer, new points of argument were raised by the Examiner. Namely, the Examiner alleges that the combination of *Stanis et al.* and *Ohrn* teach inputting bed

availability information for a plurality of healthcare facilities, as required by independent Claims 1 and 14. Further, the Examiner alleges that Claim 14 merely recites the manner in which the claimed apparatus will be used. In addition, the Examiner alleges that *Stanis et al.* teach matching the medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information of a plurality of health facilities based on each of the plurality of healthcare facilities having beds for providing one of the types of medical care to treat the medical condition of the patient, as required by Claim 1.

**I. *STANIS ET AL.* AND *OHRN*, TAKEN SINGLY OR
IN COMBINATION, DO NOT TEACH OR SUGGEST TO ONE OF
ORDINARY SKILL IN THE ART INPUTTING BED AVAILABILITY
INFORMATION FOR A PLURALITY OF HEALTHCARE FACILITIES,
AS REQUIRED BY CLAIMS 1 AND 14**

Independent Claims 1 and 14 require inputting bed availability information for a plurality of healthcare facilities into the database. The Examiner admits Appellant's argument that "*Stennis et al.* teach only one healthcare provider rather than a plurality of providers is convincing." See Examiner's Answer, page 6. However, the Examiner alleges "*Ohrn* is relied upon to teach the plurality of providers, see column 5, lines 37-41 (those hotels with vacant rooms), [and] *Stanis et al.* is relied upon for the teaching of the healthcare providers

with vacant rooms." See Examiner's Answer, page 6. Contrary to the Examiner's allegations, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teach or suggest inputting bed availability information for a plurality of healthcare facilities, as required by Claims 1 and 14.

The Examiner admits *Stanis et al.* merely teach only one healthcare provider. In addition, *Stanis et al.* merely teach "a search is made for all bed numbers in locations containing a specified nursing station number and control characters indicating a need for special attention or service." See column 21, lines 25-28.

The Examiner admits that *Ohrn* merely teaches hotels having a plurality of vacant rooms. Moreover, *Ohrn* merely teaches that a "voice network interface will read out the relevant service offers, i.e. those hotels which have vacant rooms." See column 5, lines 39-41. *Ohrn* does not teach or remotely suggest inputting information for a plurality of healthcare services, as required by Claims 1 and 14. Actually, *Ohrn* merely teaches providing information on vacant hotel rooms.

Therefore, neither *Stanis et al.* nor *Ohrn*, taken singly or in combination, teach or suggest inputting bed availability information for a plurality of healthcare facilities into the database, as required by Claims 1 and 14.

**II. CLAIMS 14 DOES NOT MERELY STATE THE MANNER OF USE
BUT IS STRUCTURALLY LIMITED BY THE ELEMENTS OF CLAIM 14**

With regard to Claim 14, the Examiner, citing *Ex Parte Masham*, 2 USPQ 2d 1657 (BPAI 1987), alleges "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus." Appellant submits the Examiner has disregarded the claimed subject matter as a whole. Furthermore, the Examiner has attempted to distill Appellant's claimed invention directed to a system for storing and accessing bed availability information to merely what the Examiner has characterized as "a network, a database, an input means, means for searching, comparing, matching and retrieving." See Examiner's Answer, page 8. Moreover, the Examiner has failed to interpret the claim language in its broadest reasonable interpretation consistent with the specification and to read the claims in light of the specification. *In re Sneed*, 710 F.2d 1544, 1548, 218 U.S.P.Q. 385, 388 (Fed. Cir. 1983).

Still further, *In re Masham* is distinguishable. *In re Masham* merely determined that the apparatus was not patentably distinct from the prior art merely by the amount of material to be poured into the apparatus. 2 USPQ 2d 1657. Specifically, *In re Masham* related to the claimed limitation of a material to be

worked upon in combination with an apparatus. Id. However, Claim 14 requires a means for inputting bed availability information of a plurality of healthcare facilities into the database and a means for accessing the bed availability information and retrieving the bed availability information via the computer network. Furthermore, Claim 14 requires a means for inputting information of the patient into a form via the computer network wherein the information of the patient is stored in the database. Appellant submits inputting bed availability information and information of the patient into the database structurally limits Claim 14 and does not merely define a method of using any database or computer network. Therefore, the Examiner's rejection of Claim 14 as merely reciting the manner of use is improper.

**III. *STANIS ET AL.* DO NOT TEACH OR SUGGEST
TO ONE OF ORDINARY SKILL IN THE ART MATCHING
THE MEDICAL CONDITION OF THE PATIENT IN THE DATABASE
TO OBTAIN THE BED AVAILABILITY INFORMATION OF A
PLURALITY OF HEALTHCARE FACILITIES**

The Examiner alleges "the matching feature is disclosed in column 21, lines 29-34, specifically lines 27-28 [of *Stanis et al.*] disclose matching based on 'nursing station and control characters indicating a need for special attention or service.'" However, Claim 1 requires matching the medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information of a plurality of

healthcare facilities based on each of the plurality of healthcare facilities having beds for providing one of the types of medical care to treat the medical condition of the patient.

Stanis et al. merely teach "a search is made for all bed numbers in locations containing a specified nursing station number and control characters indicating a need for special attention or service." See column 21, lines 25-28. In addition, *Stanis et al.* merely teach "a search is made for all bed numbers in storage locations containing a given set of status characters." See column 21, lines 30-32.

Nowhere do *Stanis et al.* teach or suggest to one of ordinary skill in the art matching the medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information, as required by Claim 1. Specifically, *Stanis et al.* fail to teach or even remotely suggest matching any information about a patient to obtain bed availability information.

In essence, *Stanis et al.* merely teach locating beds in a single hospital that may need cleaning or servicing in a specified nursing station. Specifically, *Stanis et al.* merely teach that "other sections [of the bed information storage area] are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed". See column 7, lines

47-51.

Moreover, *Stanis et al.* teach away from the invention as defined by Claim 1. *Stanis et al.* teach inserting cards into a reader to transmit information to one or more points within one hospital. The purpose of the system of *Stanis et al.* is merely to do "away with written messages and orders and insures the collection, calculation, and compilation of all charges on any desired periodic basis." See column, 2, lines 18-20. Both the purpose of the system of *Stanis et al.* and the method of use of the system of *Stanis et al.* teach away from a system and method for matching a medical condition of the patient in the database to obtain the bed availability information of the plurality of healthcare facilities, as required by Claim 1.

Therefore, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests to one of ordinary skill in the art matching a medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information of the plurality of healthcare facilities, as required by Claim 1.

IV. CONCLUSION

In view of the foregoing remarks, Appellant respectfully submits that all of the claims in the application are in

allowable form and requests the Board to reverse the rejections of the Examiner.

Respectfully submitted,

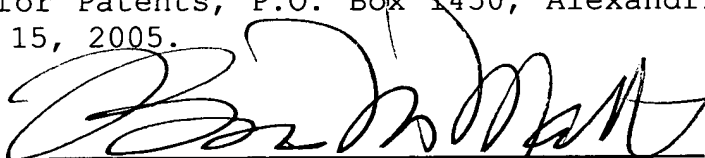


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EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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APPELLANT'S APPEAL BRIEF

SIR:

This Appeal Brief is submitted in support of the Notice of Appeal filed on September 14, 2004. The Appeal was taken from the Final Rejection dated August 3, 2004.

I. REAL PARTY IN INTEREST

Medical Central Online is the real party in interest as the assignee of this application.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.